

Copyright Registration

John Ashley

Section Head

Visual Arts Section

Copyright Office

Registration - General

- Updates
- Best Practices
- Cancellations
- Requests for Reconsideration
- Your questions at any time during the presentation

Copyright Office website

- www.copyright.gov

Updates

- No substantive policy or examining decisions or changes
- No new copyright registration forms
- Increased Fees Effective July 1, 2006
- See Circular 4 on website
- \$45 basic application
- \$685 Special Handling
- \$100 For CA Form to correct, amplify
- Miscellaneous others

Brief Reminder How to Register

- In same mailing package, send (1) application form, (2) deposit sample of work, and (3) fee.
- Mail still being directed offsite
- Suggestions: when sending compact disks, cassettes, color and inked artwork, use either FedEx-type carrier or use USPS and put the deposit in a box or extra-padded envelope.

Brief Reminder of Benefits of Registration

- Public record of copyright facts
- Pre-requisite to filing infringement suit for U.S. works
- Certificate is prima facie evidence of validity of copyright and facts stated on it when registered before, or within five years of, first publication
- Required to engage U.S. Customs Service assistance to prevent infringing importations
- Section 412: Statutory damages and attorney's fees

Some Best Practices

- General Application Language

USE statutory terms from 17 USC 101, 102(a), and 103.

AVOID terms in section 102(b), as well as synonymous terms.

AVOID trademark and patent terms: name, title, novel, unique, look and feel, inventive, style, etc.

Best Practices: Work-Made-for-hire

- Generally, accept your assertions when corporate and organizational authors named.
- But questioning when individual is named as wmfh, and it seems that a commissioned work is involved, especially in visual arts area.
- A gentle probe asking reconsideration
- You can always send a cover letter that briefly explains how you think the situation qualifies under statutory definition

Best Practices: Alternative names for author or claimant

- Always explain any different names given in author and claimant spaces: d/b/a; a/k/a; t/a; new name after merger; etc.
- Avoid designating separate legal entities as alter egos (Corp., Inc., LLC, PC, LP, and similar as d/b/a of an individual)
- Avoid naming licensees as claimant
- Trusts and estates, or fiduciary, or beneficial owner

Best Practices: Derivative Works

- Consider declaring in preexisting materials space of application the basis for making derivative of someone else's protected work (section 103(a)).
- Consider being specific, rather than general, when describing derivative authorship in preexisting materials space.

Best Practices: claiming computer-aided changes to existing work

- Certain terms are inherently suspect in the Office: enhanced, digitized, scanned, computer-adapted, cropped, burned, dodged, removed “noise”, computer reproduction/print, cleaned up, restored, and others.
- Feist: pure, mere physical effort, sweat of brow, not copyrightable creative authorship, regardless how little or much was done.
- Thus, AVOID these terms or, at least, explain.

Best Practices: Characters

- We register claims based on character-related works, and leave it to courts to decide when the character is protectible outside context of any particular work.
- Claim the particular work you are depositing, not the character idea, plan, design.
- And certainly do not claim, refer to, possible future uses of character.

Best Practices: Architectural Works

- Refusing all claims on works fixed in plans or drawings pre-December 1, 1990, and remained unpublished and not constructed as of that date, and not constructed on or before 12/31/2002. (See endnote 3 to Chapter 1 of Act.)
- Refusing claims based on interior design, regardless if described in compilation language.
- Refusing site or complex design landscaping design.
- Commissioning owner as wmfh-author?

Best Practices: Websites

- Webmaster or web-designer often does not own anything that can be registered
- AVOID: web design, entire website, user interface, web art, links, hyperlinks, screen displays
- Office policy regarding format, layout, and functional space design will prevent most screens from being registered
- Deposit the entire site, or explain that you are sending less and that's all you want registered (Circular 66)

Websites continued:

- Most do contain substantial preexisting materials that must be disclaimed.
- Published? Unpublished? You decide. If published, then send the EXACT edition of the site as of the publication date given, NOT a later updated or changed edition. Or, redact later content.

Best Practices: Group Options for Websites and BLOGS

- Depends entirely on how site or blog is organized
- Consider database?....Circular 65....3 months of updates allowed
- Consider periodical?...Circular 62... months of issues, or even contributions on GR/CP for a 12-month period.
- Consider daily newspaper/newsletter?...Circular 62a...allows 1 month of issues.

Best Practices: Supplemental Registrations on Form CA

- Send a copy of basic registration certificate.
- Explain corrections in names of author or claimant.
- Changes needed in wmfh and transfer, if author or claimant being corrected?
- Send evidence of copyright notice when correcting a publication from post-Berne to pre-Berne.
- Indicate authorship contributed when adding an omitted author.

Form CA continued:

- Do not to indicate a change in claimant; if claimant named in basic was not wrong, then record a document to show new claimant.
- If changing basis of claim, was claimed new matter in the original deposit?
- Do not file to reflect an adverse claim
- Give cross-referencing info in space F: Are you representing the claimant identified in the basic or on whose behalf the basic was filed?

Cancellations

- 37 CFR 201.7 specifies only current situations where Office will cancel. Even party in whose name registration was made must specify one or more of these.
- No third-party cancellations (and no interference procedure, as in patent).
- Adverse claims to the same property? File separate claims—do not request cancellation of other party's registration.

Requests for Reconsideration

- Firstly, notice the new fees!
- First and Second Requests